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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

) Div. 6

) **REPLY IN SUPPORT OF**
) **MOTION TO PRECLUDE**
) **WITNESSES, FOR ATTORNEY'S**
) **FEES AND FOR OTHER**
) **SANCTIONS, INCLUDING**
) **DISMISSAL OF THE DEATH**
) **PENALTY**

22 **ARGUMENT**

23 The State does not deny that it has repeatedly violated Rule 15.1 and this Court's
24 orders; that it scheduled defense interviews for witnesses it has no intention of calling at
25 trial; that it scheduled defense interviews without disclosing known reports of the
26 witnesses to the defense before the interview; and that it has wasted the time of counsel
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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 MAR 10 PM 4:05 ✓

JEANNE HICKS, CLERK

BY: S. FIELDS

1 with just weeks left before trial in a capital case that has been pending for over a year.
2 Instead, the State asks the Court to consider the “context” for their repeated failures to
3 comply with the disclosure rules and Rule 15. But the State does not explain how any
4 “context” excuses its failure to narrow its witness list to those it actually intends to call,
5 or even to those who have personal knowledge of relevant evidence. The defense
6 agrees, the Court should consider the real context of the State’s disclosure violations - *a*
7 *death penalty case* – and should sanction the State for its repeated failures to comply,
8 without explanation, cause, or excuse.

9 The State complains that payment of fees for interviews of two irrelevant
10 witnesses and exclusion of the witness which will require an additional interview is not
11 appropriate. However, the State, while acknowledging its violations under the Rule, has
12 not suggested any alternative sanctions. Rule 15.7 permits the Court to impose any
13 sanction it finds appropriate where a party violates the disclosure required under Rule
14 15. *See* Ariz. R. Crim. P. 15.7(a). A trial court has broad discretion in fashioning a
15 sanction and will not be found to have abused its discretion “unless no reasonable judge
16 would have reached the same result under the circumstances.” *See State v. Armstrong*,
17 208 Ariz. 345, 354, 93 P.3d 1061, 1070 (2004) (citing *State v. Chapple*, 135 Ariz. 281,
18 297 n. 18, 660 P.2d 1208, 1224 n. 18 (1983)). The defense cannot possibly be prepared
19 for trial in less than two months if it has to interview irrelevant witnesses and interview
20 relevant witnesses multiple times.

21 The State’s disclosure violations are not isolated and have infected every aspect
22 of this case. The State was ordered to narrow its witness list in November, 2009 and
23 has continued to advise the Court that this narrowing process is still not complete seven
24 weeks before trial. The defense is not able to interview the State’s experts and
25 witnesses because they have not completed reports and disclosure is ongoing. The
26 defense is not able to prepare for trial because it does not know which witnesses are
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1 testifying. The defense is not able to confront the evidence against Mr. DeMocker
2 because it is late or not yet disclosed. It would not have required a searching inquiry by
3 the State to determine that these witnesses – who had literally nothing to do with this
4 case – did not belong on the witness list. The State does not dispute this. The proposed
5 sanctions are appropriate.

6 The Court should impose a sanction against the State for its conduct in failing to
7 narrow its witness list as required by Rule 15.1, failing to comply with this Court's
8 Order to narrow its witness list and wasting defense and law enforcement resources with
9 irrelevant interviews. The defense requests that this Court order the State to pay Mr.
10 Sears' fees for attending the three interviews and to exclude Det. J. Jarrell.

11 In a death penalty case an elevated level of due process applies both to the guilt
12 and penalty phases of the case. *Beck v. Alabama*, 447 U.S. 625, 638 (1980).

13 As the defense has noted elsewhere, the cumulative effect of the State's repeated
14 and continuing violation of the Court's orders and of Rule 15.1 should lead to the
15 dismissal of the death penalty. The defense has filed supplemental briefing on this issue
16 with the Court on March 8, 2010.

17 CONCLUSION

18 Defendant Steven DeMocker, by and through counsel, hereby requests that this
19 Court prohibit the State from offering testimony of Det. J. Jarrells, order the State to pay
20 attorney's fees for three interviews and strike the death penalty as a sanction for the
21 State's conduct in this case.

22
23 DATED this 10th day of March, 2010.

24
25 By: _____

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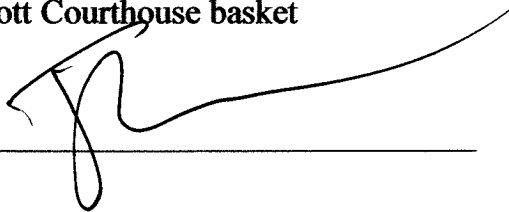
ORIGINAL of the foregoing hand delivered for
filing this 10th day of March, 2010, with:

Jeanne Hicks
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

COPIES of the foregoing hand delivered this
this 10th day of March, 2010, to:

The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six
120 S. Cortez
Prescott, AZ 86303

Joseph C. Butner, Esq.
Prescott Courthouse basket

A handwritten signature in black ink, appearing to be 'J. Butner', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.